

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2175 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No.

PATEL SEVANTILAL MAGANLAL

Versus

MISTRI BABUBHAI KHODIDAS

Appearance:

MR PK JANI for Petitioners

MR RN SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 04/08/98

ORAL JUDGEMENT

Defendants-Revisionists have preferred this revision under section 29(2) of the Bombay Rent Act,1947.

The brief facts are that the defendants revisionists were tenants in the disputed accommodation on monthly rent of Rs.15/-. It was alleged that the rent from 1.11.1966 fell due from the defendants. They paid

Rs.50/- by money order and Rs.50/- through Chanchalben. These payments of Rs.100/- were adjusted by the landlord -respondent. After adjustment of this amount a sum of Rs.1905/- was found due from the defendants. Notice of demand and eviction was sent which was served on the defendants. They did not give any reply to the notice nor paid arrears of rent, hence the suit for eviction was filed.

The suit was contested by the defendants on variety of grounds upon which as many as 13 issues were framed. In the written statement dispute regarding standard rent was raised and it was pleaded that the standard rent cannot exceed Rs.5/-p.m. It was also pleaded that the entire rent was paid but no rent receipt was issued by the respondent. It was also pleaded that the tenancy was annual. The validity of the notice was also disputed. Plea of non-joinder was also raised by them.

The Trial Court found that the notice was valid, that the standard rent was Rs.15/- p.m. and that the defendants were in arrears of rent at least from 16.6.1971. It further found that no dispute regarding standard rent was raised by the tenant at the earliest opportunity by sending reply to the notice. Finding that the notice was valid, the suit was decreed and decree for eviction was passed under section 12(3)(a) of the Bombay Rent Act.

As appeal was preferred by the defendants revisionists. The Appellate Court found that Section 12(3)(a) of the Bombay Rent Act, did not apply, rather the case was governed by Section 12(3)(b) of the Act. The Appellate Court further found that the defendants were not entitled to protection under section 12(3)(b) of the Act. Accordingly, decree for eviction was confirmed. It is therefore, this revision.

Learned Counsel for the revisionists Mr.P.K.Jani and learned Counsel for the respondent Mr.R.N.Shah have been heard.

First contention of learned Counsel for the revisionists has been that since no rent receipts were issued by the landlord, hence the two Courts below were fell in error in repelling revisionists contention regarding upto date payment of rent. This contention is hardly acceptable. The question of payment of rent is pure question of fact. It was concurrently decided by the two Courts below that the rent was at least in

arrears since 16.6.1971. The landlord had already given adjustment of two payments, one of Rs.50/- sent by money order and the other of Rs.50/- paid through Chanchalben. Another amount of Rs.25/- was also said to have been remitted by money order but this remittance was disbelieved by the Trial Court. If no rent receipt was issued by the landlord it became a case of oath against oath and oath of the landlord was rightly believed by the two Courts below. There is thus no error in appreciation of evidence on record hence the finding of fact regarding payment of rent and consequent arrears of rent hardly requires interference in this revision.

Next contention of learned Counsel for the revisionists that the standard rent was not fixed also cannot be accepted. The Trial Court considered in the plea raised in the written statement and found that the standard rent was Rs.15/- p.m.

The next contention has been that no clear finding has been given as to what was exact arrears of rent, hence, on a vague finding the decree for eviction cannot be passed. The Trial Court has given finding that the rent is due since 16.6.1971. The landlord claims arrears since 1.11.1966. It seems that time barred arrears of rent was not taken into consideration by the Trial Court. There is categorical finding of the Trial Court that the tenant was in arrears of rent for more than six months. This is sufficient finding under section 12(3)(a) of the Bombay Rent Act.

Another contention of the learned Counsel for the revisionists has been that since the Appellate Court has disagreed with the view taken by the Trial Court that the case is governed by section 12(3)(a) and has held that it is a case covered by section 12(3)(b), hence no decree for eviction could be passed only on the strength of observation that the tenant did not regularly pay the arrears of rent. It was contended that after deletion of the word 'regularly' from section 12(3)(b) the decree for eviction could not be passed against the tenant for mere irregularity in payment of rent. However, it is to be tested whether the finding of the lower Appellate Court that the case is not covered under section 12(3)(a) is in accordance with law or not.

If the landlord comes with the case under section 12(3)(a) of the Act, the Courts have to see whether this section applies or not and if this section applies, there is no option before the Court but to pass decree for eviction. When landlord specifically comes under section

12(3)(a) and he makes out a case under this section then the Court cannot return finding that the case is covered by section 12(3)(b) of the Act. The view taken by the lower Appellate Court that the case is covered by section 12(3)(b) is patently erroneous. The lower Appellate Court was misled by the fact that in the year 1971 previous notice was given by the landlord and in reply to that notice the tenant raised dispute regarding standard rent which was still subsisting. The Appellate Court was further of erroneous view that the notice, exhibit 27, which is subsequent notice and is the basis of the suit has not waived the earlier notice of 1971. Notice exhibit 27 is dated 4.5.1976. If the landlord remained silent for a period of about five years and took no action for eviction of the tenant on the basis of previous notice it can safely be said that the previous notice stood waived. Even in view of illustration (b) to section 113 of the Transfer of Property Act, service of subsequent notice waived earlier notice to quit. It is at this juncture the lower Appellate Court fell in error in holding that the previous notice was not waived and the dispute of standard rent was subsisting.

In this case the tenant did not send any reply to the notice, exhibit 27. He did not raise dispute regarding standard rent within a month of service of notice either by sending reply to the notice or by moving application within a month disputing standard rent or by moving separate application for fixation of rent. Mere raising dispute regarding standard rent in the written statement cannot be said to be bonafide dispute regarding standard rent. This dispute was not bonafide because according to tenant the standard rent could not exceed Rs.5/- p.m. Whereas the Trial Court found that the standard rent reasonably could be Rs.15/- p.m. and it was so fixed. The taxes were not payable over and above this amount of Rs.15/- p.m. Thus, at a belated stage raising a dispute of standard rent in the written statement was not bonafide dispute of standard rent.

Since taxes were not payable over and above Rs.15/- p.m. the tenancy remained monthly tenancy and the rent was payable monthly.

There is no force in the defendants plea that it was a case of annual tenancy. The annual tenancy can be created only by registered instrument. There is no evidence that any rent note or lease deed was executed and it was registered. On mere pleadings of the defendants the nature of the tenancy cannot be changed.

There is no invalidity in the notice. The two Courts below have also found that the notice is perfectly valid. As such section 13(1)(a) was applicable. The view taken by the Trial Court on this point is correct and that taken by the lower Appellate Court is incorrect.

If section 13(1)(a) of the Bombay Rent Act applies the suit for eviction could be decreed. The Appellate Court fell in error in proceeding to examine the case within the ambit of section 12(3)(b) of the Act. Even then it did not reverse the decree of the Trial Court under section 12(3)(b). There is thus no merit in this revision, which is hereby dismissed. Parties shall bear their own costs.

Sd/-

(D.C.Srivastava, J.)

m.m.bhatt